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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/591,266

05/11/2007

R. Scott Tann

81,648

9303

29089 7590 03/03/2011
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EXAMINER

PRYOR, ALTON NATHANIEL

ART UNIT

PAPER NUMBER

1616

NOTIFICATION DATE

DELIVERY MODE

03/03/2011

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No. 10/591,266	Applicant(s) TANN ET AL.	
	Examiner ALTON N. PRYOR	Art Unit 1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 January 2011.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 8-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 8-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>3/31/06</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3,8-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Herold et al. (US 6803345; 10/12/04). Herold et al teach microemulsion forming concentrates comprising a herbicide (abstract, column 3 lines 32-45). Herold et al. teach that a microemulsion comprise an oil phase and water (column 3 lines 46-67, column 9 line 59 - column 10 line 8). The microemulsion concentrate include nonionic surfactants, cationic surfactants such as ethoxylated tallow amine and anionic surfactants such as ethoxylated tristerylphenol phosphate potassium salt (column 7 line 23—column 8 line 27). The microemulsion may contain an adjuvant (column 21 lines 15-40). Herold et al. do not exemplify an invention existing as a crop oil concentrate or a microemulsion comprising an amine surfactant plus a phosphate ester plus a hydrocarbon oil. Herold et al.s' microemulsion would automatically exist as a crop oil concentrate since Herold et al teach that the concentrate contains oil (column 3 line 46-67). Herold et al. suggest that microemulsions contain herbicide, amine surfactant, phosphate ester, hydrocarbon oil and water. Thus, Herold er al. suggest instant invention.

Claims 1,2,8-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mueinghoff (US 6156705; 12/5/00) Mueinghoff teaches an adjuvant composition

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comprising an anionic surfactant such as phosphate esters, a nonionic surfactant such as ethoxylated fatty amines or vegetable oil or mineral oil and mixtures thereof.

Mueinghoff teaches the addition of herbicides to the adjuvant composition (column 1 line 50 – column 2). Mueinghoff teaches that the pesticide composition which is a concentrate can be diluted water (column 6 lines 1-19). Mueinghoff does not exemplify an invention existing as a crop oil concentrate or a microemulsion comprising an amine surfactant plus a phosphate ester plus a hydrocarbon oil. Mueinghoff's concentrate would automatically exist as a crop oil concentrate since Mueinghoff et al teach that the concentrate contains oil (column 1 line 50 – column 2). Mueinghoff suggest that concentrate contain herbicide, amine surfactant, phosphate ester, Mueinghoff hydrocarbon oil and water. Thus, Mueinghoff. suggest instant invention.

Claims 1,2, are rejected under 35 U.S.C. 103(a) as being unpatentable over Kowalik et al (US 6464996; 10/15/2002). Kowalik teaches a thickened oil flowable concentrate comprising a surfactant (abstract, column 3). Kowalik teaches that the surfactant includes alkoxyated amines (column 3 lines 53-65). Kowalik does not exemplify the oil concentrate comprising alkoxyated amines. However it would have been obvious to make an oil concentrate comprising alkoxyated amines since Kowalik suggests such an oil concentrate.

Claims 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Elsik et al. (USAN 20040142823 or 10/476964; 11/6/03). Elsik et al teach an adjuvant composition comprising polyoxyalkylene alkylamines (page 3 lines 13-20). Elsik et al teach that the adjuvant composition may exist in many forms including crop oil

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concentrate (page 30 lines 8 – 18). Elsik et al do not exemplify the oil concentrate comprising polyoxyalkylene alkylamines. However, it would have been obvious to make an oil concentrate comprising polyoxyalkylene alkylamines since Elsik et al suggests such an oil concentrate.

Telephonic Inquiry

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ALTON N. PRYOR whose telephone number is (571)272-0621. The examiner can normally be reached on 8:00 a.m. - 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Alton N. Pryor/

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Primary Examiner, Art Unit 1616